

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SILVERCREEK MANAGEMENT INC., *et al.*,

Plaintiffs,

v.

CITIGROUP, INC., *et al.*,

Defendants

02-cv-08881-JPO

ORAL ARGUMENT REQUESTED

**THE FINANCIAL INSTITUTIONS' NOTICE OF MOTION TO DISMISS THE
SILVERCREEK PLAINTIFFS' THIRD AMENDED COMPLAINT (ECF 10-115)**

PLEASE TAKE NOTICE that, upon the annexed Third Amended Complaint in the above-captioned action, dated August 11, 2011¹; the Financial Institutions' Joint Memorandum of Law in Support of Their Joint Motion to Dismiss the Silvercreek Plaintiffs' Third Amended Complaint; the accompanying Declaration of David H. Korn, executed on July 29, 2016, with the exhibit thereto; Credit Suisse's Separate Memorandum of Law in Support of the Financial Institutions' Joint Motion to Dismiss the Silvercreek Plaintiffs' Third Amended Complaint; the Deutsche Bank Defendants' Separate Memorandum of Law in Support of the Financial Institutions' Joint Motion to Dismiss the Silvercreek Plaintiffs' Third Amended Complaint and the accompanying Declaration of Linda Regis-Hallinan; and upon all prior papers and proceedings herein, Defendants Credit Suisse First Boston (USA), Inc. (n/k/a Credit Suisse

¹ A courtesy copy of the exhibits to the Third Amended Complaint will be provided to the Court on compact disk when the motion is fully briefed, *see Individual Practices in Civil Cases, Rule 2.C*, and will be provided in printed format upon request.

(USA), Inc.), Credit Suisse First Boston LLC (n/k/a Credit Suisse Securities (USA) LLC) and Pershing LLC (f/k/a Donaldson, Lufkin & Jenrette Securities Corporation) (together, “Credit Suisse”), Deutsche Bank Alex. Brown Inc. (n/k/a/ Deutsche Bank Securities Inc.) and Deutsche Bank AG (together, “Deutsche Bank”) and Merrill Lynch & Co., Inc. (“Merrill Lynch”) (collectively, the “Financial Institutions”), by and through their undersigned counsel, hereby move this Court, before the Honorable J. Paul Oetken, United States District Judge, at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York, for an order, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing with prejudice Counts One (Aiding and Abetting Fraud as against all Financial Institutions), Two (Conspiracy to Commit Fraud as against all Financial Institutions), Three (Aiding and Abetting Negligent Misrepresentation as against all Financial Institutions), Four (Fraud and Deceit as against Merrill Lynch and Credit Suisse), Five (Negligent Misrepresentation as against Merrill Lynch and Credit Suisse), Six (Violations of Section 11 of the Securities Act as against Deutsche Bank and Credit Suisse), Eight (Violations of Section 12(a)(2) of the Securities Act as against Credit Suisse), and Nine (Violations of Article 581-1 *et seq.* of the Texas Securities Act as against Deutsche Bank and Credit Suisse) of the Silvercreek Plaintiffs’ Third Amended Complaint; and granting such other and further relief as this Court may deem just and proper.

August 5, 2016

By: /s/ Richard W. Clary
Richard W. Clary
David H. Korn
CRAVATH, SWAINE & MOORE LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
Email: rclary@cravath.com

Attorneys for Defendants
Credit Suisse First Boston (USA), Inc. (n/k/a
Credit Suisse (USA), Inc.),
Credit Suisse First Boston LLC (n/k/a Credit
Suisse Securities (USA) LLC) and
Pershing LLC (f/k/a Donaldson, Lufkin &
Jenrette Securities Corp.)

By: /s/ Adam S. Hakki (with consent)
Adam S. Hakki
Daniel Lewis
James Lee
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-7216
Facsimile: (646) 858-7216
Email: ahakki@shearman.com

Attorneys for Defendant
Merrill Lynch & Co., Inc.

By: /s/ Ruth E. Harlow (with consent)
Ruth E. Harlow
Linda Regis-Hallinan
PEPPER HAMILTON LLP
620 Eighth Avenue, 37th Floor
New York, New York 10018
Telephone: (212) 808-2700
Facsimile: (212) 286-9806
Email: harlowr@pepperlaw.com

Attorneys for Defendants
Deutsche Bank Alex. Brown, Inc. (n/k/a
Deutsche Bank Securities Inc.) and
Deutsche Bank AG

TO ALL COUNSEL OF RECORD

Via ECF